IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 922 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRAHLADPURI M BAVAGOSAI

Versus

EXCUTIVE ENGINEER

Appearance:

1. Special Civil Application No. 922 of 1999

MR RR VAKIL for Petitioner No. 1

MR. H.J.TRIVEDI for NANAVATI & NANAVATI for Respondent No. 1-2

MR K.L.PANDYA, AGP for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 01/10/2003

ORAL JUDGEMENT

Heard learned advocate Mr. R.R.Vakil for

petitioner, learned AGP Mr. K.L.Pandya appearing on behalf of respondent No.3 and learned advocate Mr. H.J.Trivedi appearing on behalf of respondent Nos.1 & 2.

2. In the present petition the petitioner has challenged the orders dated 21.10.1991 and 28.8.1998 whereby the standard rent has been recovered by the respondents from the salary of the petitioner because after the transfer of the petitioner petitioner had occupied the quarter. Learned advocate Mr. Vakil has submitted that this order of recovery from the salary of the petitioner being a standard rent has been passed without giving any reasonable opportunity of hearing to the petitioner, therefore, it is contrary to the principles of natural justice. Learned advocate Mr. H.J.Trivedi appearing on behalf of respondent Nos. 1 & 2 has submitted that this order has been passed because petitioner has unauthorisedly occupied the quarter for which he was not entitled according to the service rules. Therefore, respondents are entitled to recover the standard rent from the salary of the petitioner. It is not in dispute that before passing such order, reasonable opportunity was not given to the petitioner. In view of these facts when any adverse order is passed by the authority being an administrative authority having the adverse effect and civil consequences then prior opportunity of hearing is required to be given to the concerned employee before passing such adverse orders. It is also a settled law laid down by the Apex Court that if any order is adverse to the status and prestige of the employee relating to the service condition then prior opportunity must be given to the employee. This opportunity is not given to the employee, therefore, both the orders which have been passed by the respondents dated 21.10.1991 and 28.8.1998 are required to be quashed and set aside with a direction to the respondents to pass appropriate orders after giving reasonable opportunity of hearing to the petitioner.

3. In result, the present petition is allowed. Both the orders dated 21.10.1991 and 28.8.1998 are hereby quashed and set aside. It is open for the respondents to pass appropriate orders in respect to recovery of the rent from the salary of the petitioner after giving reasonable opportunity of hearing to the petitioner. It is made clear that this Court has passed this order without expressing any opinion on merits. Rule is made absolute accordingly. No order as to costs.

(H.K.RAthod,J)

Jayanti*